

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,) 4:09CR3129
)
)
 v.)
)
)
 MICHAEL LEE BUTLER,) MEMORANDUM AND ORDER
)
)
 Defendant.)
)

Under Rule 35(b), I previously cut the defendant's sentence in half (to 60 months) while at the same time considering the Fair Sentencing Act of 2010 (FSA). While there is no motion pending, our excellent probation staff has submitted a "Retroactive Crack Cocaine Worksheet" advising me that I have the discretion to reduce the defendant's sentence under the FSA and under the provisions of *Dorsey v. United States*, 132 S. Ct. 2321 (2012) (applying the FSA's lower triggering amounts for statutory minimum sentences to post-Act sentencing of pre-Act offenders).

As I did less than one year ago (filing no. 79), and because of the defendant's extensive criminal history and because I considered the FSA when I reduced the defendant's sentence under Rule 35(b), I decline to exercise my discretion to lower the defendant's sentence even further. Moreover, to protect the public, I believe the defendant should participate in the Residential Drug and Alcohol Program before he is released from prison and a reduced sentence would diminish the possibility of that occurring. Therefore,

IT IS ORDERED that:

1. USPO Annalee Thomas shall file the new "Worksheet" in the court file.

2. I decline to exercise my discretion to reduce the defendant's sentence.
3. The Clerk shall provide a copy of this Memorandum and Order to the defendant at his last known address, to USPO Thomas, to AUSA Susan Lehr (as Ms. Lipovsky is no longer handling federal criminal cases), to Dana M. London, the defendant's former appointed counsel and to David Stickman, FPD.

DATED this 15th day of August, 2012.

BY THE COURT:

Richard G. Kopf
Senior United States District Judge